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6 LE ROI JOHNSON,

7 Plaintiff,

8 v.

9 CONTRA COSTA COUNTY, et al.,

10 Defendants.

11 No. C-07-00195 MMC (EDL)

12 **ORDER DENYING DEFENDANT'S  
MOTION FOR SANCTIONS; ORDER TO  
SHOW CAUSE**

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14 Plaintiff filed his complaint on January 10, 2007. On February 23, 2007, Judge Chesney  
15 referred this case to this Court for all discovery purposes. On September 20, 2007, Defendants filed  
16 a motion to compel discovery, which the Court granted on October 26, 2007. The Court ordered  
17 Plaintiff to serve responses to Defendants' discovery requests and initial disclosures no later than  
18 November 30, 2007.

19 On December 19, 2007, Defendants filed a motion for sanctions on the grounds that Plaintiff  
20 failed to serve any discovery or disclosures in violation of the Court's October 26, 2007 Order.  
21 Plaintiff failed to oppose the motion for sanctions, and he did not appear at the February 5, 2008  
22 hearing. In the motion for sanctions, Defendants seek dismissal of Plaintiff's complaint, or in the  
23 alternative, evidentiary and monetary sanctions based on one failure to respond to discovery and one  
24 failure to comply with a court order.

25 A district court must weigh five factors in determining whether to dismiss a case as a  
26 sanction: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
27 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
28 disposition of cases on their merits; and (5) the availability of less drastic sanctions. See Payne v.

1      Exxon Corp., 121 F.3d 503, 5080 (9th Cir. 1997). Dismissal is an extreme sanction to be imposed in  
2 cases where the violations of court orders were willful, in bad faith or the fault of the party. See  
3 United States v. Kahaluu Construction Co., 857 F.2d 600, 603 (9th Cir. 1988). Although the first  
4 three factors weigh in favor of dismissal, the fourth and fifth factors weigh against dismissal,  
5 presenting a close question. Dismissal, or at least evidentiary sanctions, may well be warranted,  
6 particularly if Plaintiff fails to comply with this or future court orders. The Court understands  
7 Defendants' frustration with Plaintiff's lack of participation in this case, and is mindful that trial is  
8 set in this case for June 2, 2008. However, since dismissal or the equivalent through issue  
9 preclusion are extreme sanctions, the Court will give Plaintiff one more chance to prosecute this  
10 case. Therefore, Defendants' motion for sanctions is denied.

11        Accordingly, Plaintiff is ordered to show cause as to why this Court should not recommend  
12 that this case be dismissed for failure to comply with Court discovery orders and failure to prosecute  
13 pursuant to Federal Rule of Civil Procedure 41(b). The show cause hearing is scheduled for  
14 February 19, 2008 at 9:00 a.m. in Courtroom E, 15th Floor, 450 Golden Gate Avenue, San  
15 Francisco, California. Further, Plaintiff shall comply with the Court's October 26, 2007 discovery  
16 order no later than February 19, 2008, and shall provide proof of that compliance at the February 19,  
17 2008 hearing. Any unexcused failure to comply with this Order will result in a recommendation by  
18 the Court for severe sanctions, up to and including dismissal of Plaintiff's complaint with prejudice.

19        **IT IS SO ORDERED.**

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21 Dated: February 6, 2008

  
22 ELIZABETH D. LAPORTE  
23 United States Magistrate Judge  
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